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HOUSE BILL 106

46TH LEGISLATURE - STATE OF NEW MEXICO - SECOND SESSION, 2004

INTRODUCED BY

Thomas E. Swisstack

FOR THE LEGISLATIVE EDUCATION STUDY COMMITTEE

AN ACT

RELATING TO COMPULSORY SCHOOL ATTENDANCE; PROVIDING FOR EARLY IDENTIFICATION OF UNEXCUSED ABSENCES AND TRUANCY; PROVIDING FOR ENFORCEMENT OF HABITUAL TRUANCY; PROVIDING PENALTIES.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. A new section of the Compulsory School Attendance Law is enacted to read:

"NEW MATERIAL UNEXCUSED ABSENCES AND TRUANCY-- ATTENDANCE POLICIES. --

A. As used in this section and Sections 22-12-7 and 22-12-8 NMSA 1978:

(1) "habitual truant" means a student who has accumulated the equivalent of ten or more unexcused absences within a school year;

(2) "truant" means a student who has

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1 accumulated five unexcused absences within a twenty-day period;
2 and

3 (3) "unexcused absence" means an absence from
4 school or a class for which the student does not have an
5 allowable excuse pursuant to the Compulsory School Attendance
6 Law or rules of the local school board or governing authority
7 of a private school.

8 B. Each school district shall maintain an
9 attendance policy that:

10 (1) provides for early identification of
11 students with unexcused absences, truants and habitual truants
12 and provides intervention strategies that focus on keeping
13 truants in an educational setting and prohibit out-of-school
14 suspension and expulsion as the punishment for truancy; and

15 (2) requires that class attendance be taken
16 for every instructional day in every public school or school
17 program in the district.

18 C. School districts shall report truancy and
19 habitual truancy rates to the department in a form and at such
20 times as the department determines."

21 Section 2. Section 22-12-2 NMSA 1978 (being Laws 1967,
22 Chapter 16, Section 170, as amended) is amended to read:

23 "22-12-2. COMPULSORY SCHOOL ATTENDANCE-- RESPONSIBILITY. --

24 A. Any qualified student and any person who because
25 of his age is eligible to become a qualified student as defined

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1 by the Public School Finance Act until attaining the age of
2 majority shall attend a public school, a private school, a home
3 school or a state institution. A person shall be excused from
4 this requirement if:

5 (1) the person is specifically exempted by law
6 from the provisions of this section;

7 (2) the person has graduated from a high
8 school;

9 (3) the person is at least seventeen years of
10 age and has been excused by the local school board or its
11 authorized representative upon a finding that the person will
12 be employed in a gainful trade or occupation or engaged in an
13 alternative form of education sufficient for the person's
14 educational needs and the parent, guardian or other person
15 having custody and control consents; or

16 (4) with consent of the parent, guardian or
17 person having custody and control of the person to be excused,
18 the person is excused from the provisions of this section by
19 the superintendent of schools of the school district in which
20 the person is a resident and the person is under eight years of
21 age.

22 B. A person subject to the provisions of the
23 Compulsory School Attendance Law shall attend school for at
24 least the length of time of the school year that is established
25 in the school district in which the person is a resident.

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1 C. Any parent, guardian or person having custody
2 and control of a person subject to the provisions of the
3 Compulsory School Attendance Law is responsible for the school
4 attendance of that person.

5 D. Each local school board and each governing
6 authority of a private school shall enforce the provisions of
7 the Compulsory School Attendance Law for students enrolled in
8 their respective schools."

9 Section 3. Section 22-12-7 NMSA 1978 (being Laws 1967,
10 Chapter 16, Section 175, as amended) is amended to read:

11 "22-12-7. ENFORCEMENT OF ATTENDANCE LAW - HABITUAL
12 TRUANTS - - PENALTY. - -

13 A. Each local school board and each governing
14 authority of a private school shall initiate the enforcement of
15 the provisions of the Compulsory School Attendance Law for
16 students enrolled in their respective schools.

17 B. To initiate enforcement of the provisions of the
18 Compulsory School Attendance Law against an habitual truant, a
19 local school board or governing authority of a private school
20 or its authorized representatives shall give written notice of
21 the habitual truancy by certified mail to or by personal
22 service on the parent, guardian or custodian of [a] the student
23 subject to and in noncompliance with the provisions of the
24 Compulsory School Attendance Law.

25 C. If [~~violations of the provisions of the~~

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1 ~~Compulsory School Attendance Law~~ unexcused absences continue
2 after written notice as provided in Subsection B of this
3 section has occurred, the student shall be reported to the
4 probation services office of the judicial district where the
5 student resides for an investigation as to whether the student
6 shall be considered to be a neglected child or a child in need
7 of supervision and thus subject to the provisions of the
8 Children's Code.

9 D. If, after review by the juvenile probation
10 office [~~of the children's court division or by the district~~
11 ~~judge of the children's court division~~] where the student
12 resides, a determination and finding is made that the
13 [~~nonattendance~~] unexcused absences by the student may have been
14 caused by the parent, guardian or one having custody of the
15 student, then the matter will be referred by the juvenile
16 probation office [~~or by the children's court division of the~~
17 ~~district court~~] to the district attorney's office or any law
18 enforcement agency having jurisdiction for appropriate
19 investigation and filing of charges allowed under the
20 Compulsory School Attendance Law. Charges may be filed in
21 magistrate court or district court. A hearing officer may hear
22 charges filed in district court.

23 E. A parent, guardian or one having custody of the
24 student who, after receiving written notice as provided in
25 Subsection B of this section and after the matter has been

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1 reviewed in accordance with Subsection D of this section,
2 knowingly allows the student to continue to violate the
3 Compulsory School ~~[Attendance]~~ Attendance Law shall be guilty
4 of a petty misdemeanor. Upon the first conviction, a fine of
5 not less than ~~[twenty-five dollars (\$25.00) or more than]~~ one
6 hundred dollars (\$100) or imprisonment for a definite term not
7 to exceed ninety days or both may be imposed, or the parent,
8 guardian or one having custody of the student may be ordered to
9 perform community service. If violations of the Compulsory
10 School Attendance Law continue, upon the second and subsequent
11 convictions, the parent, guardian or one having custody of the
12 student who knowingly allows the student to continue to violate
13 the Compulsory School Attendance Law shall be guilty of a petty
14 misdemeanor and shall be subject to a fine of not more than
15 five hundred dollars (\$500) or ~~[incarceration for a period]~~
16 imprisonment for a definite term not to exceed six months or
17 both.

18 F. The provisions of this section shall apply
19 beginning July 1, ~~[1987]~~ 2004. "

20 Section 4. Section 22-12-8 NMSA 1978 (being Laws 1985,
21 Chapter 104, Section 1) is amended to read:

22 "22-12-8. ~~[NOTICE OF ABSENCE]~~ EARLY IDENTIFICATION--
23 UNEXCUSED ABSENCES AND TRUANCY. --Notwithstanding the provisions
24 of Section 22-12-7 NMSA 1978, if a student is ~~[absent for three~~
25 ~~or more successive school days]~~ truant, the ~~[local]~~ school

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1 district shall contact [~~by telephone or written notice~~] the
2 student's [~~parents~~] parent, legal guardian or custodian [~~no~~
3 ~~later than the close of school on the school day next~~
4 ~~succeeding the three-day period~~] to inform the parent, legal
5 guardian or custodian that the student is truant and to discuss
6 possible interventions. The provisions of this section do not
7 apply to any absence if the parent, legal guardian or custodian
8 [~~prior to the end of the three-day period~~] has contacted the
9 school to explain the absence [~~prior to the end of the three-~~
10 ~~day period~~]. "

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